

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

SAMUEL RIVERA, JR.,

Civil #: 1:17-CV-7935

Plaintiff,

ANSWER

-against-

Jury Trial Demanded

DAVID GEORGE GARDNER, JR. and
EAN HOLDINGS, LLC,

Defendants.

-----X

Defendant, DAVID GEORGE GARDNER, JR. h/r/a (“GARDNER”), by his attorneys, RIVKIN RADLER LLP, respectfully submits the following upon information and belief as and for his answer to plaintiff’s complaint:

A. PARTIES

1. Defendant, GARDNER, denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs “1,” “3,” “4,” “5,” “6,” and “7” of the plaintiff’s complaint.

2. Defendant, GARDNER, denies each and every allegation contained in paragraph “2” of the plaintiff’s complaint in the form alleged except admits that defendant, GARDNER, is a resident of the State of New York.

B. JURISDICTION

3. Defendant, GARDNER, denies each and every allegation contained in paragraphs “8” and “9” of the plaintiff’s complaint in the form alleged and respectfully refers all questions of law to this Honorable Court.

C. FACTS

4. Defendant, GARDNER, denies each and every allegation contained in paragraph “10” of the plaintiff’s complaint in the form alleged.

D. COUNT 1 – NEGLIGENCE

5. Defendant, GARDNER, denies each and every allegation contained in paragraph “11” of the

plaintiff's complaint.

F. DAMAGES

6. Defendant, GARDNER, denies each and every allegation contained in paragraph "12" of the plaintiff's complaint and respectfully refers all questions of law to this Honorable Court.

G. PRAYER

7. Defendant, GARDNER, denies each and every allegation contained in paragraph "13" of the plaintiff's complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

8. If plaintiff did sustain injuries as alleged in the complaint, which the defendant, GARDNER, specifically denies, such injuries were caused, in whole or in part, or were contributed to, by reason of the acts, omissions, wrongs, carelessness, negligence, want of care and culpable conduct of the plaintiff and not by any acts, omissions, wrongs, carelessness, negligence, want of care, culpable conduct of the defendant, GARDNER, and plaintiff's recovery, if any, should be barred or reduced in accordance with the doctrine of comparative negligence.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

9. Upon information and belief, any past or future costs or expenses incurred or to be incurred by the plaintiff for medical care, dental care, custodial care, rehabilitative services, loss of earnings was or will be replace or indemnified, in whole or in part, from collateral sources as defined in CPLR § 4545(c).

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

10. The plaintiff cannot recover "Basic Economic Loss" as defined by the New York State Insurance Law.

WHEREFORE, defendant, DAVID GEORGE GARDNER, JR., demands judgment dismissing the plaintiff's complaint herein, together with the costs and disbursements of this action.

Dated: Uniondale, New York
December 7, 2017

Yours, etc.,

RIVKIN RADLER LLP
Atty's. for Defendant
DAVID GEORGE GARDNER, JR.

By:


ERIC S. STROBER, ESQ.
926 RXR Plaza, 10th Floor
Uniondale, NY 11556-0926
(516) 357-3434/3333-Fax #
RR File No. 1-3

TO: Elizabeth Pendzick, Esq.
HAUSMAN & PENDZICK
Atty's. for Plaintiff
440 Mamaroneck Ave.-Suite 408
Harrison, NY 10528
(914) 946-3344/9733-Fax #

All Parties VIA ECF (Pacer)